

MAR 27 2008

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
NIKKI J. PORTER,)	CASE NO. 07-73380-MHM
)	
Debtor.)	
)	
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ULRA GROUP OF COMPANIES, INC.,)	
NIZAR DAMANI, NADIYA DAMANI,)	
)	ADVERSARY PROCEEDING
Plaintiffs,)	NO. 07-6674
)	
v.)	
)	
NIKKI J. PORTER,)	
)	
Defendant.)	

**ORDER GRANTING PLAINTIFFS' MOTION TO
ENFORCE SETTLEMENT AGREEMENT AND
DENYING DEFENDANT'S MOTION TO STAY DISCOVERY**

This adversary proceeding was filed November 26, 2007. Plaintiffs seek a determination that the claims against Debtor are nondischargeable pursuant to 11 U.S.C. §523(a)(2), (4) or (6). Plaintiffs' complaint alleges Debtor, a former employee of Plaintiffs, made unauthorized charges on Plaintiffs' credit cards for Debtor's personal expenses, made unauthorized payments from Plaintiffs' corporate funds for Debtor's personal expenses, and otherwise misappropriated Plaintiffs' funds for Debtor's personal use.

Plaintiffs and Debtor engaged in negotiations to settle this adversary proceeding. On or about February 20, 2008, Debtor communicated to Plaintiffs' attorney her agreement to settle and, on February 25, 2008, Plaintiffs and Debtor signed the Settlement Agreement attached to Plaintiffs' motion to enforce the settlement agreement, a copy of which is attached hereto as Exhibit "A." Debtor, however, refused to sign the proposed Consent Order to be offered to resolve this adversary proceeding and refused to sign a letter to MBNA regarding the unauthorized charges to Plaintiffs' credit card account (the "MBNA letter"). Consequently, Plaintiffs filed a motion to enforce the Settlement Agreement and a motion for protective order. Already pending was Debtor's motion to stay discovery until resolution of a pending criminal action against her. Hearing on both motions was held March 13, 2008. Present at the hearing were attorneys for Plaintiffs and Debtor, who is proceeding *pro se*.

Debtor and the attorney for Plaintiffs who negotiated the settlement, Jim Hughes, testified at the hearing. Debtor did not deny she had signed the Settlement Agreement nor that she intended to settle this proceeding. Her failure to sign the proposed Consent Order and the MBNA letter was based upon her dissatisfaction with the wording of the MBNA letter.

The Settlement Agreement provides that Debtor is indebted to Plaintiffs in the amount of \$150,000, which is nondischargeable under 11 U.S.C. §523(a) and which Debtor will pay, with 7% interest, at the rate of \$500 per month. The Settlement Agreement also provides that if Debtor does not default or fail to cure a default in those monthly payments, and if Debtor pays a total of \$100,000 on or before April 1, 2018 (the "Last Payment"), the entire debt shall be deemed satisfied. The Settlement Agreement provides that the first payment is due April 1, 2008, and provides that Debtor will sign a letter to MBNA that will be delivered to Plaintiff Nizar Damani.

Based upon the evidence presented at the hearing, the parties clearly had a meeting of the minds regarding settlement and executed the Settlement Agreement which embodied all the terms to which they had agreed, except as to the MBNA letter. A review of the Settlement Agreement shows that the parties deleted paragraph 11, which defined the purpose of the MBNA letter. The deletion of paragraph 11 renders the purpose of the letter, at best, ambiguous. Therefore, Debtor will not be required to execute the MBNA letter. Accordingly, it is hereby

ORDERED that Plaintiffs' motion to enforce the Settlement Agreement is granted; provided, however, that the first payment by Debtor is due May 1, 2008, and the Last Payment is due June 1, 2018. Debtor is not required to execute the MBNA letter. It is further

ORDERED that Debtor's motion to stay discovery and Plaintiffs' motion for protective order are denied as moot.

The Clerk is directed to serve a copy of this order upon Plaintiff's attorney, Debtors, and Defendant's attorney.

IT IS SO ORDERED, this the 26th day of March, 2008.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

Settlement Agreement

This Agreement is made on February 17, 2008 by and among Nizar Damani and Nadiya Damani (hereinafter referred to as the "Damanis"), Ultra Group of Companies, Inc. ("Ultra"), and Nikki Porter ("Porter").

1. Coincident with signing this Agreement, Porter shall sign and deliver to Nizar Damani the letter which is attached to and incorporated in this Agreement as Exhibit A.
2. Porter consents to the filing of the Joint Motion for Consent Order and Judgment, which is attached to and incorporated in this Agreement for all purposes as Exhibit B, in the case of Ultra Group of Companies, et al. v. Porter, Adversary No. 07-06674, which is pending in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division ("Adversary Proceeding").
3. Porter consents to the filing of the Consent Order and Judgment, which is attached to and incorporated in this Agreement for all purposes as Exhibit C, in the Adversary Proceeding.
4. The parties to this Agreement shall not disparage each other. The parties shall not make derogatory comments or other statements about each other to any government agency, authority or official (federal or state) or any other person. It is the intent of the parties that it shall not be a breach of this paragraph 4 for a party to give truthful testimony in any civil or criminal investigation or proceeding in which the party is asked to testify.
5. Except for the claims which are the subject of the Consent Order and Judgment, the Damanis and Ultra release Porter from all actual and potential claims, complaints, demands, causes of action, damages, costs, expenses, fees, and other liabilities of every sort and description, direct or indirect, fixed or contingent, known or unknown, suspected or unsuspected, and whether or not liquidated, including, without limitation, claims based upon preexisting acts occurring at any time up to the date of this Agreement, which may result in future damages or injury.
6. Porter releases and discharges the Damanis and Ultra and its owners, officers, directors, employees, benefit plans, insurers, and agents from all actual and potential claims, complaints, demands, causes of action, damages, costs, expenses, fees, and other liabilities of every sort and description, direct or indirect, fixed or contingent, known or unknown, suspected or unsuspected, and whether or not liquidated, including, without limitation, claims based upon preexisting acts occurring at any time up to the date of this Agreement, which may result in future damages or injury.
7. Porter shall return all property belonging to Ultra, including without limitation cell phones, all Ultra documents and records, all documents from her personnel file and all copies (in whatever form, whether written, electronic or otherwise) of any such documents, including her non-disclosure, non-compete, and other agreements with Ultra.

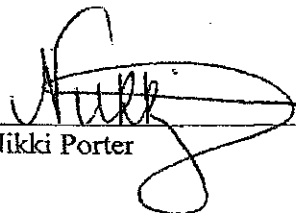
Exhibit "A"

8. The parties hereby stipulate and agree that Ultra's and Damanis' claims against Porter and upon which the Consent Order and Judgment are based constitute non-dischargeable debts according to 11 USC §§ 523.
9. This Agreement is intended to compromise and settle disputed claims among the parties and should not be interpreted as an admission of liability by any party.
10. This Agreement is null and void and of no force and effect unless the Consent Order and Judgment, which is attached to and incorporated in this Agreement for all purposes as Exhibit C, is approved by the Bankruptcy Court.

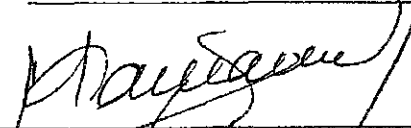
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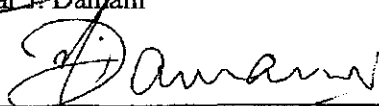
~~11. If MBNA transfers to Porter the outstanding balance attributable to MBNA Credit Card Account Number 5490 9949 6200 8496 in the name of Nizar J. Damani (the "Account"), and if the Damanis do not suffer an adverse reference on their credit rating relating to the Account, and if the Damanis are not treated as receiving discharge of indebtedness income relating to the Account, and if MBNA absolves the Damanis from all responsibility for the outstanding balance on the Account, then the indebtedness of \$150,000 shall be reduced by the amount of the outstanding balance on the Account, but Porter's payment obligations under the Consent Order and Judgment shall continue. Before any reduction of the \$150,000 indebtedness shall be effective, MBNA must provide the Damanis with evidence satisfactory to the Damanis that the Damanis will not be held responsible for the outstanding balance attributable to the Account.~~

ULTRA GROUP OF COMPANIES, INC.

By: Nizar Damani / Nadiya Damani 
Nikki Porter

Its: Chairman / CEO


Nizar J. Damani


Nadiya Damani